

SANTA CLARA POLICE DEPARTMENT

PUBLIC INFORMATION POLICY

ISSUED JULY 2007

54.2.1 Purpose

The purpose of this general order is to establish policy and procedures to comply with the California Public Records Act, the California Penal Code and other applicable laws and legal decisions concerning the release of public information. See also G.O. [54.1.9](#).

54.2.2 Policy

It is the policy of the Santa Clara Police Department to comply with the law regarding disclosure of public information, which may be included in day-to-day service activities and police documents. Requests for releasing reports can be accepted during open lobby hours. However, business hours for releasing and/or inspecting reports will be Monday through Friday, 8:00 a.m. to 5:00 p.m.

In conjunction with the publics' right to know, the Department must protect the legal rights of victims, witnesses, accused persons and confidential informants. The Department will ensure disclosure of public information is in compliance with the law.

The Department will justify withholding any records by demonstrating that the records are exempt under the law, or that in withholding the records, the public interest is served which outweighs the requested disclosure.

Public Inspection Procedure:

- All arrest and crime report information shall be available in accordance with the limitations of public law and consistent with this policy.
- Department personnel shall take necessary steps to assist the requester in submitting a focused request.
- The Department will determine if the request is a Public Records Act or a request for a copy of a police report and then respond accordingly.
- Records personnel shall review reports prior to public disclosure to ensure names and information entitled to an exemption from disclosure are deleted or to determine whether reasons exist which specifically exempts the report from disclosure.
- A record shall be maintained with the original report of all such releases of information.

- All released reports will be stamped with a controlled document stamp.
- A fee from the current fee schedule shall be charged for release of reports.

54.2.3 Information to be Released

Public or releasable information is described, in part, in the California Public Records Act (Government Code Sections 6250-6270), which covers exemptions from public disclosure.

Government Code Section 6254(f) defines information that must be made public unless release of the information would endanger the safety of a person or the successful completion of an open investigation.

The inspection, or withholding, of the public records maintained by the Department will be in accordance with the California Public Records Act (CA Government Code Section 6250 et seq.), the California Penal Code and other applicable regulations.

Unless release would endanger the safety of a person or the successful completion of an investigation, the following types of information, collected in the normal course of business, must be released on request.

- Calls for Service
 - Date, time and location of all complaints or requests for assistance, and the nature of the Department's response.
 - Date, time of report and factual circumstances surrounding the incident, including general descriptions of injuries, property or weapons involved.
 - Victim information, *except victims of abuse, sex crimes or violent offenses*

Request for Police Crime Report

Requests for releasing reports can be accepted during open lobby hours. However, business hours for releasing and/or inspecting the reports will be Monday through Friday from 0800 to 1700.

- A. Citizens shall complete a Request for Record Information form. A written request is required when copies of reports are being released.
- B. The SCPD employee accepting the form will ensure the form is completed fully and confirm the case number is correct before the citizen leaves the lobby.
- C. All released reports will be stamped with a controlled document stamp.
- D. All written requests will be scanned and made a part of the report file.

- E. The Department has up to 10 days to respond to a request, however, in every instance, the Department will do its best to assist the requester and provide the information immediately.
- F. The Department will adhere to the Santa Clara County T.N.G. Order (T.N.G. vs. Superior Court 4 Cal. 3d 767) regarding the release of information involving juveniles.
- G. Reports shall be released to the victim or authorized representative and/or an insurance carrier against which a claim has been, or might be, made.
- Names, addresses of *victims*, arrestees and witnesses, *except* confidential informants. Victims and witnesses may request that their name, in addition to other identifying data, be withheld under section 293 of the Penal Code.
 - In the case of a minor, the parent or guardian may request confidentiality.
 - The Santa Clara Police Department will prevent a defendant from obtaining victim and witness information to include date of birth, address, telephone, drivers license number (except for collision reports) and Social Security Number. The Department is not responsible for improper second-party release. Penal Code Section 964.
 - Date, time and location of the incident, all diagrams and any property involved.
 - Statements of parties involved and all witness statements, *except* confidential informants.
- H. The following information must be redacted from all reports regardless of the requester's involvement.
- All phone numbers.
 - All DMV information – DL print out or vehicle registration (okay to release DL number, driver's name, and physical characteristics and vehicle license plate, VIN, and/or physical characteristics of vehicle.)
 - Warrant information or criminal history information
 - Probation or parole status
 - Social security numbers
- I. The requester will be charged for the direct cost of making a copy.
- J. Arrested Adults
- a. Except for arrestees who qualify under Penal Code Section 851.6, full name, address and occupation, date of birth and description.
 - b. Date, time, location of the arrest and factual circumstances surrounding the arrest.
 - c. Date and time of booking, amount of bail, location where arrestee is held and all charges.
 - d. Time and manner of release.

- e. Names of juvenile arrestees are to be released in accordance with the current T.N.G. Order (T.N.G. vs. Superior Court 4 Cal. 3d 767).

Accident Reports

Accident reports are released pursuant to section 20012 CVC.

Any party having an interest in the accident is entitled to the entire report including all names and addresses of involved parties and witnesses. An exception to this is witness information in a hit and run accident. This information is not releasable to the suspect or responsible party. A written request from the responsible's representative (attorney or insurance) must state they will not provide witness information to the responsible party.

- A. Citizens shall complete a Request for Record Information form. A written request is required when copies of reports are being released.
- B. The SCPD employee accepting the form will ensure the form is completed fully and confirm the case number is correct before the citizen leaves the lobby.
- C. All released reports will be stamped with a controlled document stamp.
- D. All written requests will be scanned and made a part of the report file.
- E. The Department has up to 10 days to respond to a request, however, in every instance, the Department will do its best to assist the requester and provide the information immediately.
- F. The requester will be charged for the direct cost of making a copy.
- G. California Vehicle code section 20012 and 16005 govern the release of juvenile information from accident reports. Information regarding juveniles who are involved in accidents can be released without a petition to the court. It is appropriate to release this information to all involved parties and their representatives (insurance, attorney, etc).

Reports Involving Juveniles

Reports involving juveniles (other than accidents) are released under the current Santa Clara County T.N. G. Order. Citizens must submit a petition to Juvenile Court and a judge determines if the requester is entitled to a copy of the report.

- A. The petition form can be obtained here or at Juvenile Probation – 840 Guadalupe Parkway, San Jose. The request must be signed by a Juvenile Court judge and stamped by the court clerk.

B. When we receive a petition that has been granted by the Juvenile Court we will provide the citizen with a copy of the report after first determining if any information needs to be redacted.

C. The granted petition will be scanned and made a part of the report file.

D. The Department has up to 10 days to respond to a request, however, in every instance, the Department will do its best to assist the requester and provide the information immediately.

E. The requester will be charged for the direct cost of making a copy.

54.2.4 Exemptions to the Release of Information

To balance the individual's right to privacy with the public's interest certain information is exempted from release by law or court decisions. The exemptions listed in this policy do not purport to cover every situation or subject on which questions may arise.

In order to maintain confidentiality and comply with specific exceptions allowed under the California Government Code 6254, and other relevant legal authority, some information may be withheld from disclosure. Information withheld from disclosure will be redacted or expunged from the copy.

A. Department personnel will determine which information must be redacted or expunged.

B. Department personnel will use a black marker, white-out, correction tape, or other means to remove or obliterate the confidential information. The redacted copy will be photocopied to produce a copy that further conceals the redacted information.

C. The following information must be redacted from all reports regardless of the requester's involvement

- All phone numbers.
- All DMV information – DL print out or vehicle registration (okay to release DL number, driver's name, and physical characteristics and vehicle license plate, VIN, and/or physical characteristics of vehicle.)
- Warrant information or criminal history information
- Probation or parole status
- Social security numbers

D. Pursuant to Government Code Section 6254(f)(2), the following may be withheld from disclosure:

The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273(a), 273(d), 273.5, 286, 288, 288(a), 289, 422.6, 422.7, 422.75, or 646.9 of

the Penal Code may be withheld at the victim's request, or the request of the victim's parent or guardian if the victim is a minor.

- E. Juvenile records (under 18 years of age). Refer to T.N.G. Order (T.N.G. vs. Superior Court 4 Cal. 3d 767). by Santa Clara County Superior Court. No report involving anyone under the jurisdiction of Juvenile Court may be released without being approved by the Court and having the appropriate court clerk stamp.
- F. Victim information if the Victim has requested confidentiality under Penal Code Sections: 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 293, 293.5, 422.6, 422.7 or 422.75.
- G. Confidential informant information.
- H. Individuals in custody under Welfare and Institutions Code Section 5157 (dangerous or gravely disabled).
- I. Victim information to any arrested person or defendant under Penal Code Section 841.5.
- J. Criminal offender record information (CORI – per Younger v. Berkeley City Council, 1975).
- K. The following information need not be released, per Government Code Section 6254(f):
 - a. Portions of reports that reflect analysis, recommendations or conclusions of the investigating officer.
 - b. Portions of reports that disclose investigative techniques and/or procedures.
 - c. Information that may jeopardize an open investigation, related investigation or law enforcement proceedings.
 - d. Information that may endanger the safety of any person.
 - e. Preliminary drafts, notes or memoranda, which are not retained in the normal course of business per Government Code Section 6254(a).
 - f. Records pertaining to pending litigation, to which the City of Santa Clara, the Santa Clara Police Department or their employees are or may be a party by virtue of their employment, will not be released until adjudicated by the City Attorney's Office. Government Code Section 6254(b).
 - g. Personnel records, medical or similar files, the disclosure of which would constitute an unwarranted invasion of privacy. Government Code Section 6254(c).
 - h. Information that may deprive a person of a fair trial (South Coast Newspapers, Inc. v. City of Oceanside, 1984).

54.2.5 Discretionary Release of Information

Exceptions may be made in the Exemptions to Release Information when not prohibited by law, on a case-by-case basis.

- The Records Manager, Services Division Commander or another Division Commander must approve discretionary releases.
- Discretionary release must be based on the following criteria:
 - Opportunity for the released information to aid in the investigation of a crime.
 - Opportunity for the release of information to assist in the arrest of a suspect.
 - Necessity to warn the public of danger.

54.2.6 Conditional Release of Information

Partial restrictions or release of information may be necessary, when not prohibited by law, on a case-by-case basis.

Conditional release must be approved by the Records Manager, a Division Commander or, in their absence, a Watch Commander.

Death Releases – In cases involving death, the victim's name is not to be released until identification has been confirmed and the next of kin has been notified by the Coroner's Office.

Injury Releases – In cases involving serious injury, the victim's name will not be released until the next of kin has been notified.

Suicide Notes – Contents of suicide notes are not to be released without the expressed approval of the Investigations Division Commander or the Services Division Commander, but the existence of a suicide note may be acknowledged.

Multi-jurisdiction Investigations and Assisting Other Agencies – Public or press inquiries will be referred to the agency with primary jurisdiction.

54.2.7 Information Related to Pending Litigation

Reports and information developed after the filing date, pertaining to pending litigation to which the City of Santa Clara, the Santa Clara Police Department or departmental employees is a party, shall not be released.

All requests for release of information whether under the Public Records Act or subpoena shall be referred to the Office of the City Attorney or appropriate outside legal representative if a case has been so assigned.

These reports may be released only when the litigation or claims have been finally adjudicated or otherwise settled and the City Attorney has approved the release.

There is no requirement for the Department to track denied requests for information related to pending or filed litigation. If the information is still wanted after a case is adjudicated it must be requested again.

54.2.8 Personnel Information – Issues and Policy

Personnel, medical or similar files, the disclosure of which would constitute an unwarranted invasion of privacy, shall not be released.

Pitchess Motions for Department employee files must be routed to the Professional Standards office. That office will coordinate the court appearance with the appropriate legal counsel.

Issues and questions pertaining to the personnel policy shall be referred to the office of the Chief of Police.

Penalties

California Penal Code Sections 11140-11144 state it is a misdemeanor to furnish, buy, receive or possess Department of Justice state summary criminal history information without authorization by a court, statute, or decisional law. Employees who disregard department policy regarding dissemination of CORI may be subject to disciplinary action.

It is a misdemeanor to release Department of Motor Vehicles records and information to any person for a purpose other than law enforcement related queries, per Section 1808.45 of the Vehicle Code. Any employee who is responsible for the misuse of Department of Motor Vehicle record information is subject to immediate dismissal. Violations of this law may also result in criminal and/or civil action.

All access to CLETS related information is based on the “right to know” and “need to know”. Misuse of such information may adversely affect an individual’s civil rights, and violates the law and/or CLETS policy.

Penal Code section 502 prescribes the penalties relating to computer crimes. Penal code Section 11105 and 13300 identify who has access to criminal history information and under what circumstances it may be released. Penal Code Section 11141-11143 and 13302-13304 prescribe penalties for misuse of criminal history information. Government Code Section 6200 prescribes the felony penalties for misuse of public record and CLETS information. California Vehicle Code Section 1808.45 prescribes the penalties relating to misuse of Department of Motor Vehicle information. Penal Code Sections 11142 and 13303 state:

“Any person authorized by law to receive a record or information obtained from a record who knowingly furnished the record or information to a person not authorized by law to receive the record or information is guilty of a misdemeanor.”

Any employee/volunteer who is responsible for CLETS misuse is subject to immediate dismissal from employment. Violations of the law may result in criminal and/or civil action.